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Resolving Identity Theft Issues (PowerPoint)

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RESOLVING IDENTITY THEFT ISSUES

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Moderator: Craig Bell

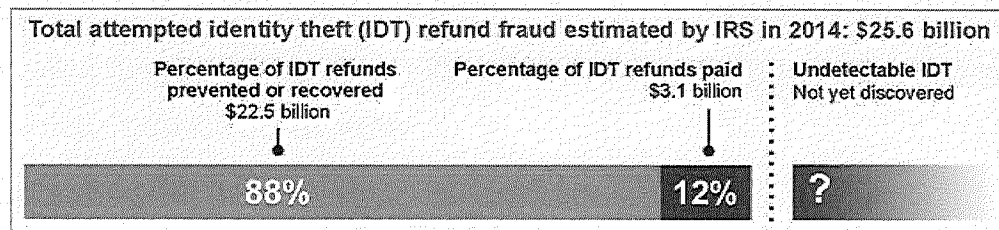
Introduction

- For the past decade, identity theft has been the leading form of consumer complaint to the Federal Trade Commission and a leading source of problems for the IRS
- Employment and tax-related fraud were the most common form of identity theft, as of March 2017
- The National Taxpayer Advocate first tagged identity theft as a most serious problem in her 2004 annual report to Congress
- The financial consequences of tax-related identity theft may include frozen or delayed refunds, loss of tax benefits, assessment of additional taxes, imposition of liens and levies to collect the incorrectly assessed taxes, and issues with non-tax benefits tied to income



Introduction

- In recent years, the IRS has made significant strides to address this issue and to combat this type of fraud
- A May 2012 report released by TIGTA reported that the IRS provided ineffective and untimely assistance to victims of identity theft

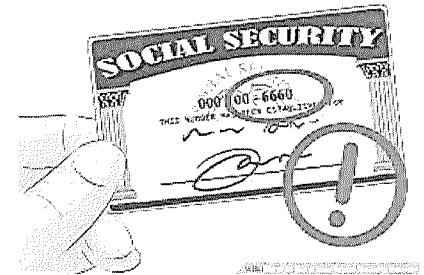


Source: GAO analysis of IRS data. | GAO-16-508

Introduction

- What has IRS done to combat identity-theft?
 - 1). *Increased criminal prosecutions*
 - 2). *Improved detection models*
 - 3). *Partnered with private and state actors to obtain better information*
 - 4). *Obtained legislation pushing back time for payment of refund in EITC returns, moving up the due dates for payers' submission of W-2, W-3, and 1099-MISC forms to January 31st (effective in 2017), and providing access prisoner database*
 - 5). *Promulgated regulations permitting the use of Truncated Taxpayer Identification Numbers (TTINs), where not prohibited by the Code, applicable regulations, or other official IRS guidance*

Tax Related Identity Theft



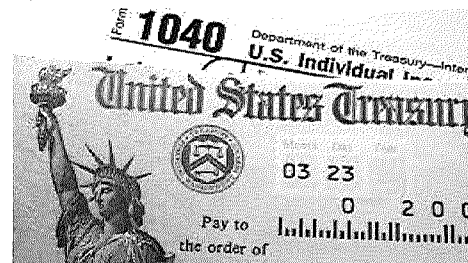
■ 1). Employment related

- *Occurs when individuals need identification in order to obtain employment*
- *Usually, the individuals engaging in employment related theft seek to do so because they are undocumented*
- *Does not generally seek to harm the true owner of the social security number ("SSN") but has the collateral effect of doing so*
- *Also has consequences for the thief if the thief later seeks to become documented and enter the path to citizenship or permanent residence*
- *Consequences beyond the IRS*
 - *Almost always this activity implicates Social Security records of earnings and other agencies as well*
- *Victims who are low income are particularly vulnerable because they do not have resources and skills to address the problems raised by the additional income appearing on their records*

Tax Related Identity Theft

■ 2). Refund related

- *Seeks to use the victim's identity in order for the thief to obtain a refund to which they are not entitled*
- *The type of theft that breaches like the one at Equifax make much easier, though the data obtained in that breach could also be used for employment related identity-theft*
- *Thief will use the taxpayer's identity to file a tax return claiming deductions or credits that result in a refund and steal money from the government*
- *In the case of low income taxpayers, the return filed by the thief may be the only return filed because the true taxpayer does not have a filing requirement*
 - *In these circumstances, the detection of the fraud becomes more difficult for the IRS and for the victim*



Tax Related Identity Theft

- 3). Business related
 - *Occurs when someone creates, uses or attempts to use a business's identifying information without authorization to obtain tax benefits*
 - *Involves both active and closed business*
 - *Thief generally seeks to use the business identity in order to receive refundable business credits or to perpetuate individual identity theft*
 - *Victims are often unaware that their identities have been compromised until they receive a notice or bill from the IRS*
 - *As the IRS has improved its performance regarding refund identity theft, more thieves have turned to business related identity theft*

Tax Related Identity Theft

■ 3). Business related

- *How does it arise?*

- Individual may file Form SS-4, Application for Employer Identification Number ("EIN"), which the IRS issues EIN, but the entity may not exist
- Individuals may appear to be employed by the entity, and the entity may seek refundable business credits
- IRS makes tax and penalty assessments against the EIN, related to non-payment and/or non-filing
- IRS may also make Combined Annual Wage Reporting ("CAWR") assessments related to non-filing of annually filed wage reporting statements

- See IRM 4.19.4

- IRM 25.23.9

- ABA Presentation by Susan Morgenstern, Local Taxpayer Advocate, Taxpayer Advocate Service, "Two Small Business Calamities" (May 2017).

SS-4 Application for Employer Identification Number (Rev. January 2022)

Department of the Treasury Internal Revenue Service

1 Large number of entity for which the EIN is being requested

2 Trade name of business (if different from name on line 1)

3 Principal administrative location (street address)

4a Mailing address (street, box, suite, etc.) (street, box, suite, etc.)

4b City, state, and ZIP code (if foreign, see instructions)

5a City, state, and ZIP code (if foreign, see instructions)

6a State in which principal business is located

7a Name of proprietor (only)

7b Social Security ID No.

8a Is this application for a limited liability company (LLC) or other entity?

8b Is this a "trust" since the receipt of 1099 payments?

9a Type of entity (check only one box. Complete 2 or 3 if "TR" and see instructions for the connection to check.

Tax Related Identity Theft

- 3). Business related
 - Businesses file Form 14039-B, Business Identity Theft Affidavit
 - But, business related identity theft can be very complex because cases may involve many quarters
 - IRS may pursue assessments against the individual who applied for the EIN, or whose SSN is on the EIN application
 - Need to unravel both the business identity theft and the consequent assessments against the individual

- *IRM 25.23.9.1*
- *IRM 25.23.9*
- *ABA Presentation by Susan Morgenstern, Local Taxpayer Advocate, Taxpayer Advocate Service, "Two Small Business Calamities" (May 2017).*

Tax Related Identity Theft

- 3). Business related
 - *Consequences:*
 - IRS will be looking for a return and payment information from the business
 - When there are no returns or payments, the IRS will request them
 - And when there is no response, the IRS will make assessments

 - *ABA Presentation by Susan Morgenstern, Local Taxpayer Advocate, Taxpayer Advocate Service, "Two Small Business Calamities" (May 2017).*

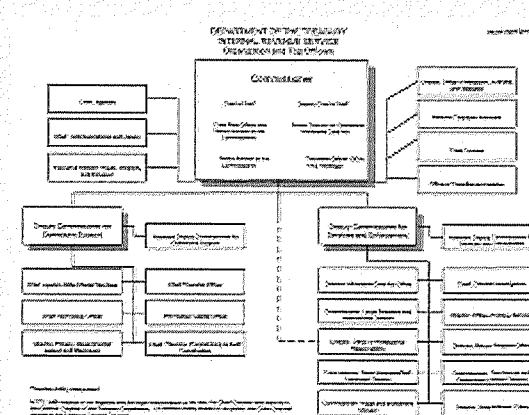
IRS Structure for Addressing Identity Theft

- When the problem first attracted widespread attention ten years ago, the IRS created the Privacy, Information Protection, and Data Security Office
 - *Renamed the Privacy, Government Liaison, and Disclosure (“PGLD”) Office in 2011*
 - *Created to oversee the use of Personally Identifiable Information (“PII”) and to find ways to maintain the security of this information*
 - *Inside of PGLD, the IRS established the Office of Incident Management and the Office of Privacy Policy and Knowledge Management*

- In 2015, the IRS created the Identity Theft Victim Assistance (“ITVA”), in an effort to provide consistent treatment to victims of tax-related identity theft
 - *New headquarters operation affiliated with the Identity Protection Strategy and Oversight Program (“IPSO”).*

IRS Structure for Addressing Identity Theft

- IPSO seeks to help taxpayers by providing victim assistance, outreach, and prevention of future identity theft
 - *The IPSO Program has fifteen distinct responsibilities*
 - *IPSO now formulates the guidelines that the IRS uses to handle identity theft cases*
- The IRS has created a Technical Working Group to identify ways to assist victims, an Identity Theft Advisory Council (“IDTAC”) to share ideas on how to attack the problem of identity theft with other interested parties, and an Identity Theft Executive Steering Committee (“IDTESC”) for oversight



IRS Structure for Addressing Identity Theft

- Identity Protection Specialized Unit (“IPSU”)
 - *Established in 2008 in Wage & Investment, Accounts Management to provide individualized assistance to taxpayers regarding identity theft*
 - *Consolidated into the Identity Theft Victim Assistance (“IDTVA”) Directorate in 2015*
 - *Evolved to monitor identity theft cases worked by other IRS functions, rather than resolve those cases*
 - *Taxpayers may report identity theft directly to IPSU by calling the ID theft hotline at (800) 908-4490*

IRS Structure for Addressing Identity Theft

■ Accounts Management

- Work the vast majority of identity theft cases
- 6 specialized groups within Accounts Management work ID theft cases
- In 2013, IRS tried to get a head start on fixing the problem created by refund identity theft, by creating Form 14039 ITA
- Form 14039 ITA signals to the IRS that it should treat the return filed by the true taxpayer as the real return, and not as a duplicate filing

Form 14039 Rev. February 2014	Department of the Treasury Internal Revenue Service Identity Theft Affidavit	OMB Number 1545-0123
<p>Complete and submit this form if you are an actual or potential victim of identity theft and would like the IRS to mark your account to identify questionable activity.</p> <p>Check only one of the following two boxes if they apply to your specific situation. (Optional for all filers.)</p> <p><input type="checkbox"/> I am submitting this form as response to a mailed notice or letter from the IRS.</p> <p><input type="checkbox"/> I am completing this form on behalf of another person, such as a deceased spouse or other deceased relative. You should provide information for the actual or potential victim in Section A, D, & D.</p> <p>Make no entries below the appropriate requirement location on RPTN when using this form AND circle A if legitimate documentation will cover processing.</p> <p>THIS FORM MUST BE SIGNED ON THE REVERSE SIDE (SECTION F).</p> <p>Section A - Reason for Filing This Form (Required for all filers)</p> <p>Check only ONE of the following two boxes. You MUST provide the requested description or explanation in the lined area below.</p> <p>1 <input type="checkbox"/> I am a victim of identity theft AND I am attaching the federal tax return.</p> <p>2 <input type="checkbox"/> I have experienced an event or activity that may affect my federal tax records.</p> <p>You should check this box if, for example, your attempt to file electronically was refused because someone had already filed using your Social Security Number (SSN) or duplicate Taxpayer Identification Number (TIN), or if you received a notice or correspondence from the IRS indicating someone was accessing using your number.</p> <p>Provide a short explanation of the problem and how you were made aware of it.</p>		
<p>You should check this box if you are the victim of non-federal tax-related identity theft, such as the misuse of your personal identity information to obtain credit. You should then check the box if no identity theft violation has occurred, but you have experienced an event that could result in identity theft, such as a counterfeit debit or credit, phone robbery, etc.</p> <p>Briefly describe the identity theft incident(s) and/or the event(s) that concern you, including the date(s) of the incident(s).</p>		

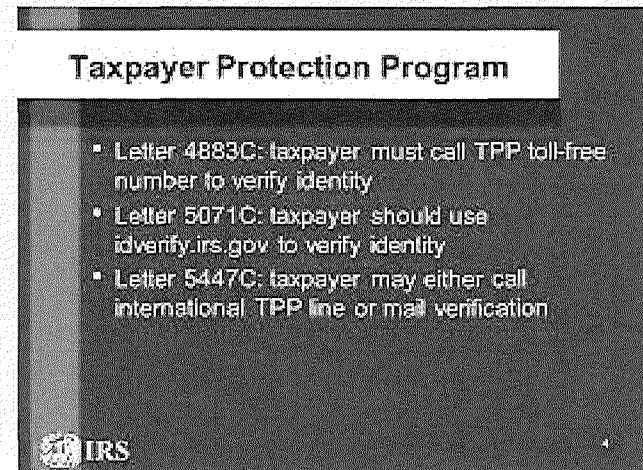
IRS Structure for Addressing Identity Theft

- Criminal Investigation (“CI”)
 - *In 2012, Identity Theft Clearinghouse (“ITC”) created within CI*
 - *Special agents can now investigate matters including: forging endorsements on Treasury checks, theft of public money, fraud in connection with access devices, mail fraud, and wire fraud*
 - *CI joined with the DOJ Tax Division to make these investigations higher priority, and issued DOJ-Tax Directive 144*
 - *Has developed the Identity Theft Victim Disclosure Waiver Process to aid state and local law enforcement agencies pursuing ID theft investigations*

TAX FRAUD


IRS Structure for Addressing Identity Theft

- Return Integrity and Correspondence Services (“RICS”)
 - *Seeks to identify and stop refund-related identity theft before it occurs*
 - *If functioning properly, it protects both individual taxpayers and the system as a whole, which is critical to the overall integrity of the tax refund system*
 - *Within RICS, the Integrity and Verification Operations (IVO) function supports the IRS’s pre-refund fraud detection and prevention efforts*
 - *If a tax return gets identified as meeting identity theft criteria, it is then routed to the IVO functions Taxpayer Protection Program (“TPP”)*



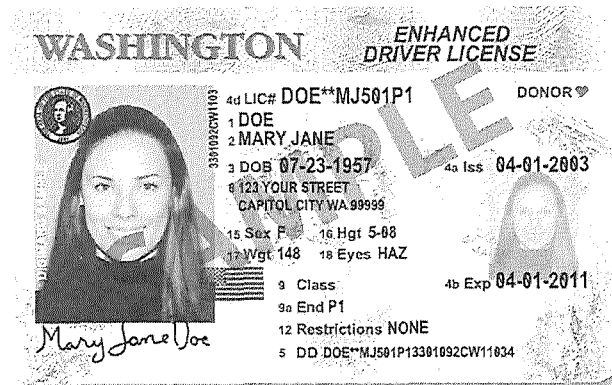
Taxpayer Protection Program

- Letter 4883C: taxpayer must call TPP toll-free number to verify identity
- Letter 5071C: taxpayer should use idverify.irs.gov to verify identity
- Letter 5447C: taxpayer may either call international TPP line or mail verification

 IRS

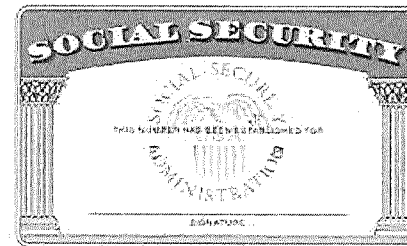
Identity Theft Supporting Documentation

- If the IRS did not catch the identity theft with its filters, it will begin action toward the true taxpayer
- The true taxpayer may first discover that personal information was compromised upon receipt of a CP2000 notice
- Because the IRS encounters some of the same claims denying prior filing or receipt of income, it must carefully listen to the taxpayer and will require the taxpayer to provide documentation in support of their claims



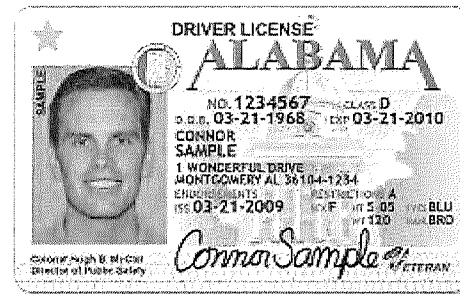
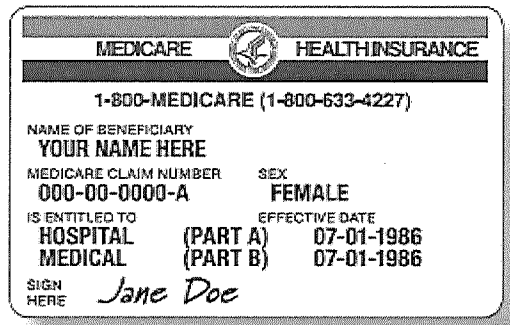
Identity Theft Supporting Documentation

- Alternatively, a taxpayer may have an electronically filed return rejected by the IRS
- If an IRS employee cannot properly determine the ownership of the TIN used on the potentially fraudulent return, the employee may request the taxpayer to provide identity theft supporting documentation to verify that the taxpayer is the true holder of the TIN and some evidence of identity theft
- IRS default position is that once it has sent a taxpayer a proposed adjustment, the true taxpayer's failure to submit the documentation requested by the IRS indicates non-existence of identity theft
 - *While a logical and necessary position by the IRS, not all taxpayers are equipped to adequately assist in fixing the problem*



Identity Theft Supporting Documentation

- When the IRS determines that identity theft has occurred and adjusts the true taxpayer's account, it should notify the taxpayer
 - *Generally includes the name of an employee at IPSU to contact with any questions or concerns*



Identity Protection Personal Identification Number

- In an effort to prevent any further harm to victims of identity theft, the IRS can issue an Identity Protection Personal Identification Number (“IP PIN”)
- IP PINs are used primarily to prevent electronic filing fraud, but may also be used on a paper return
 - Offer an additional level of security
 - New ones issued each year in December
- If the IRS issues an IP PIN, any return filed with the taxpayer’s TIN without the IP PIN will not post to the taxpayer’s account



Obtaining Taxpayer Information to Resolve Identity Theft Cases

- Disclosure laws generally protect taxpayer information and prevent identity theft
 - *When a taxpayer is the known victim of identity theft, however, IRS procedures can make it very difficult for the taxpayer to access their own information*
- In confirmed or suspected cases of identity theft, the IRS marks a taxpayer's account with various identity theft indicators
 - *When these markers exist, the practitioner will generally find it difficult to obtain any "return" or "return information" from the IRS reported under a client's SSN*

Confidentiality Revisited

- IRC § 6103 restricts the IRS from disclosing tax return information:
 - Enacted almost 30 years ago as part of the Tax Reform Act of 1976
 - Provides that, in general, tax returns and tax return information be kept confidential
 - All exceptions to this general rule must be specifically set forth in § 6103.

Obtaining Taxpayer Information to Resolve Identity Theft Cases

- Since first addressing the issue in a 2008 PMTA document, the IRS position has evolved to better assist victims
 - *A statutory fix would be still be beneficial*
- Present position of the IRS: once the invalid return is submitted, it becomes return information of both the true owner of the SSN and the identity thief
 - *This is because the information relates to the potential investigation of liability with respect to both parties*
 - *Under this analysis, an identity theft victim generally has the right to a copy of the bad tax return as long as disclosure would not impair federal tax administration*

Obtaining Taxpayer Information to Resolve Identity Theft Cases

- The authority for the most recent Chief Counsel opinion, which allows greater dissemination to the true taxpayer of the fraudulent return, is in section 6103(e)(7)
 - *Section 6103(e)(7) allows for disclosure of return information to persons authorized to have access to the return of a taxpayer as long as disclosure would not “seriously impair federal tax administration”*
 - *New rationale: while the identity thief’s return submission contains “return information,” it is not a valid “return” as contemplated by section 6103(b)(1) because it is “not filed by the true taxpayer or with the taxpayer’s consent”*
 - *Because the true owner of the SSN did not sign the filed tax return, the return lacks a valid signature, as required by the Beard test*

Obtaining Taxpayer Information to Resolve Identity Theft Cases

- In 2015, the IRS set out procedures allowing identity theft victims to have access to important tax account information
 - *Through these procedures, identity theft victims can obtain a redacted copy of a fraudulent return*
- IRS requires that the victim's name and TIN be listed as either the primary or secondary taxpayer on the fraudulent return
- IRS will not currently release business tax returns under this process

The image shows a 2012 U.S. Individual Income Tax Return (Form 1040) that has been heavily redacted with black boxes. The form is titled "1040 U.S. Individual Income Tax Return" and "2012". The redactions cover most of the personal information, including the taxpayer's name, address, and Social Security Number (SSN). The form is organized into several sections, including "Filing Status", "Exemptions", and "Income". The "Filing Status" section shows "Married" selected. The "Exemptions" section shows "2" exemptions. The "Income" section shows various income sources, including "Wages, salaries, tips, etc.", "Dividend income", and "Interest income". The form is a standard 1040 form, and the redactions are used to protect the identity of the taxpayer.

Obtaining Taxpayer Information to Resolve Identity Theft Cases

- To request the return, the taxpayer or the representative must complete Form 4506-F Request for Copy of Fraudulent Tax Return
 - *Must be mailed to:*
 - IRS, Fresno, CA 93888-0025
- Returns being sent via private delivery service should instead be mailed to: IRS, 5045 East Butler Avenue, Fresno, CA 93727

Department of the Treasury Internal Revenue Service
Form 4506-F
Request for Copy of Fraudulent Tax Return
Use only for returns that have been identified as fraudulent by the IRS. Do not use for returns that have not been identified as fraudulent by the IRS.

OMB No. 1545-0047
EFFECTIVE DATE: 01-01-2011

Section 1. Purpose of this form
This form is used to request a copy of a fraudulent tax return that has been identified as such by the IRS. It is not to be used to request a copy of a tax return that has not been identified as fraudulent by the IRS. This form is to be used only for returns that have been identified as fraudulent by the IRS.

Section 2. Required information
2.01 Name of the taxpayer (Last, first, and middle initial)
2.02 Social Security number (SSN)
2.03 Date of birth (MM/DD/YYYY)
2.04 Address (Street, city, state, and ZIP code)
2.05 Date of the fraudulent return (MM/DD/YYYY)
2.06 Name of the preparer (Last, first, and middle initial)
2.07 Taxpayer's signature (Print name and sign)
2.08 Date of signature (MM/DD/YYYY)
2.09 Name and title of the preparer (Print name and title)
2.10 Date of preparation (MM/DD/YYYY)

Section 3. Other information
3.01 How was the return prepared?
3.02 How was the return filed?
3.03 How was the return received?
3.04 How was the return identified as fraudulent?
3.05 How was the return identified as fraudulent by the IRS?
3.06 How was the return identified as fraudulent by the IRS?
3.07 How was the return identified as fraudulent by the IRS?
3.08 How was the return identified as fraudulent by the IRS?
3.09 How was the return identified as fraudulent by the IRS?
3.10 How was the return identified as fraudulent by the IRS?

Refund Suits

- When the taxpayer has been the victim of refund related identity theft, the IRS is not making adequate progress towards resolution, and the return of the taxpayer seeks a refund, the taxpayer can turn to the “normal” refund litigation process to seek an expedited review of the request for refund
 - *If six months have passed since the taxpayer filed the return seeking a refund which is being held up while the IRS seeks to resolve the identity theft issue, the taxpayer can file suit*
 - *Before embarking on this route, the practitioner should make sure the client does not have other compliance issues with the IRS or identity theft problems affecting other tax years, especially years in which a refund suit is not an appropriate remedy*
 - *At least one low income taxpayer clinic has had success in bringing refund suits as a method for forcing earlier resolution of refund identity theft and getting the refund to the client*

Tax Court



- Victims of identity theft can most easily end up in Tax Court because they will receive a notice of deficiency based on failure to report income earned by employment related identity theft or the claim of a deduction or credit in the case of business related identity theft
- If the taxpayer receives the notice of deficiency either because it is sent to his or her last known address or he or she somehow gets a copy, before filing with the Tax Court, the victim may utilize Rev. Proc. 98-54 to ask the IRS to rescind the notice of deficiency and work to correct the account
 - *Once the taxpayer files a petition with the Tax Court, however, the IRS will not rescind the notice of deficiency*

Tax Court

- Once a petition is filed, the taxpayer should work with IRS counsel to try to resolve the case.
- Taxpayers can use section 6201(d) to put the burden of proof on the IRS with respect to the income reported on the Form W-2 or Form 1099
 - *Section 6201(d) placed the burden of proof on the IRS if a taxpayer contests the validity of an information return and cooperates with the IRS during the examination phase of the case*
 - *The IRS must go out to the sender of the Form 1099 and verify the correctness of the information*
 - *For someone who is the victim of identity theft, this will generally result in a successful resolution of the case for the true taxpayer*

Tax Court

- Representatives should carefully review any proposed stipulations of settled issue or decision documents in settled Tax Court cases to see whether respondent may be trying to assert penalties that were not in the original notice of deficiency
 - *To assert such penalties, such as late file or late pay, respondent is required to amend the answer to raise it and then has the burden of proof*



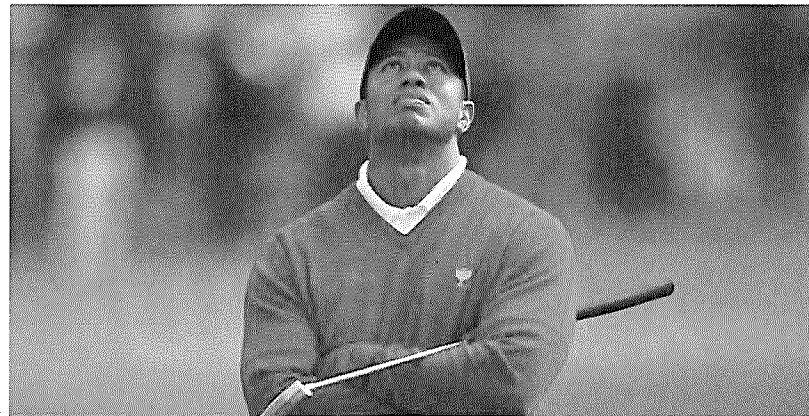
Practical Tips

- 1). If you suspect identity theft, get a POA, contact the IRS, and obtain all of the taxpayer's transcripts for as many periods as you think will be needed in order to resolve the issue before you file the identity theft form with the IRS
- 2). Let your client know that fixing an identity theft case can take a long time
- 3). If your client has filed a tax return seeking a refund and more than six months has passed with no action from the IRS on the refund and no action in sight, consider bringing a suit for refund as a means of moving the case
- 4). Check the client's credit reports to determine if the identity theft is limited to a tax problem
 - *Put a fraud indicator on the credit report to prevent further use by the thief of the taxpayer's identity.*



Practical Tips

- 5). Obtain an IP PIN number for filing with future tax returns
- 6). Go to your Local Taxpayer Advocate's office if you are having problems getting the IRS to assist you
 - *The recent decline in cases has also resulted in a relatively dramatic decline in these cases in the TAS offices but because of their past experience these offices have a lot of expertise and are generally more accessible than the IPSU units which are remote and not as customer friendly*
- 7). Expect the unexpected



Practical Tips

- 8). Be aware that the additional income that could appear because of employment theft can have an impact on a client's benefits and be proactive about finding the possible points of impact before the taxpayer loses benefits
- 9). Be alert to the possibility of identity theft when the client comes in complaining of IRS correspondence or collection action they cannot understand
 - *Because many clients put their head in the sand regarding the IRS, it can be easy to become jaded about clients complaining about IRS correspondence*
 - Sometimes these complaints have a legitimate basis due to the IRS pursuing the true taxpayer based on information in the system generated by a thief



Practical Tips

- 10). Obtain multiple original copies of identity documents (perhaps 5-8), so the practitioner does not have to make copies of copied identity documents when later submitting multiple Identity Theft Affidavits (ITAs) to various Service functions
- 11). Obtain proof of identity theft from the taxpayer
 - *At a minimum, the practitioner will need documents sufficient to satisfy the Service's substantiation requirements, a copy of a police report or a completed ITA, and a copy of a valid U.S. federal or state government issued form of identification*



Practical Tips

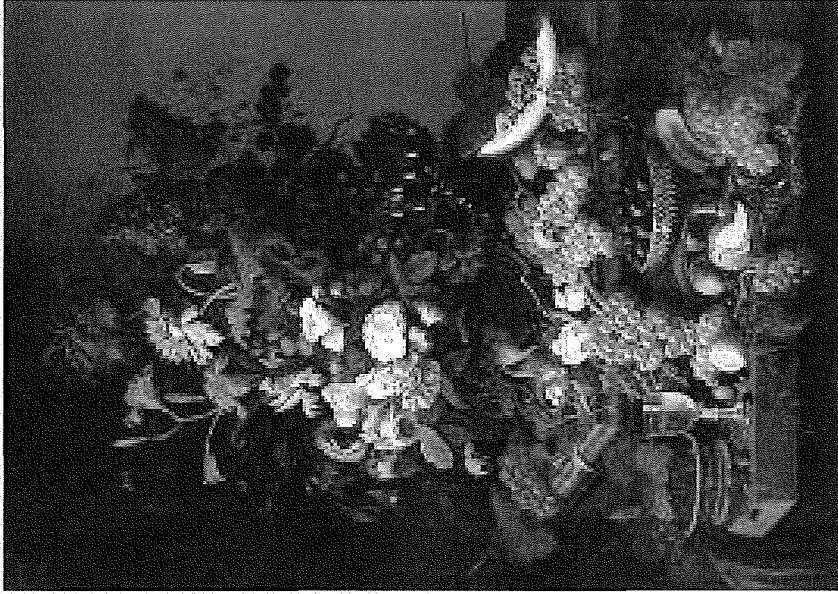
- 12). Soon after the detailed interview with the taxpayer, the practitioner should memorialize a specific yet concise version of the client's story in the narrative section of the ITA
 - *The ITA should be completed with the taxpayer*
 - *Several (perhaps 5-8) original copies of the ITA should be printed, reviewed, and signed*
- 13). If the true taxpayer has not already visited a police station to report the identity theft, the practitioner should exercise caution when recommending that the client make an in person police report due to the potential for outstanding arrest warrants as a result of the actions by the thief
- 14). Consider checking the taxpayer's earnings history from the SSA both to obtain an independent source of the taxpayer's earnings and to check with SSA to make sure that nothing the thief has done will adversely impact the taxpayer's SSA account

Conclusion

- The numbers of cases have declined significantly but still remain large in absolute terms
- Clients will feel especially put upon in paying for representation in these cases because they are the victim
 - *They will want quick resolution of a problem that will not usually go away quickly*
- Understanding the IRS systems for approaching identity theft, familiarizing yourself with the disclosure issues presented, and quickly pursuing the available avenues for resolution will keep your client from suffering more than necessary, but nothing will prevent them from significant pain once someone has stolen their identity and used it in a way that implicates the IRS



Questions?



The Abundance of Nature, Severin Roesen

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